Supreme Court, U.S.
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No. 91-1950

In The

Supreme Court of the United States

October Term, 1991

AMERICAN DREDGING COMPANY,

Petitioner,

versus

WILLIAM ROBERT MILLER,

Respondent.

Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Fifth Circuit

BRIEF FOR THE RESPONDENT IN OPPOSITION

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STATEMENT OF ISSUES PRESENTED

Whether, in a Jones Act case, 46 U.S.C.A. § 688, a Louisiana state court may accept or reject the doctrine of forum non conveniens according to its own notions of procedure for all causes of action begun in its courts.

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STATEMENT OF THE CASE

A. INTRODUCTION

This action involves an American seaman, William Robert Miller (hereinafter "Miller"), who filed a claim pursuant to the Jones Act, 46 U.S.C.A. Sec. 688 et seq., in a Louisiana state court against American Dredging Company (hereinafter "ADC"), the owner of the American vessel the M/V John R. There is no dispute that American law, more specifically the Jones Act, applies to this case. Miller filed his suit in a court of competent jurisdiction in the State of Louisiana. ADC complains that the cause of action should have been dismissed from the Louisiana court pursuant to the doctrine of *forum non conveniens*.

The Louisiana Supreme Court held that:

(1) The doctrine of *forum non conveniens* was specifically made unavailable by state statute in Jones Act or maritime law cases, and;

(2) Louisiana's *forum non conveniens* rule was not preempted by federal admiralty law. L.S.A.-C.C.P. Art. 123.

B. STATEMENT OF FACTS

William R. Miller, hereinafter (Miller), was employed by the defendant, American Dredging Company (ADC) in the capacity of a seaman and member of the crew of the M/V JOHN R, a vessel owned by ADC. On or about December 12, 1987, Miller was working in the course and scope of his employment with ADC on the Delaware River, when he was injured aboard their vessel. After being injured, Miller received initial treatment at the

Sacred Heart Medical Center in Chester, Pennsylvania. Mr. Miller was admitted on December 13, 1987 and remained in that medical facility until December 23, 1987. The only other treatment rendered in that area was at the Hospital for Joint Diseases Orthopedic Institute, which is located in New York, New York. This involved two or three examinations. The treatment lasted until sometime in February of 1988.

Shortly after this, Miller returned to Gauthier, Mississippi, which is about 100 miles from New Orleans, where he remains as a resident. For about seven years during the late 1970's and early 1980's, Miller resided in the State of Louisiana and worked for various boat companies out of Louisiana. Prior to leaving to work for ADC, Miller was a resident of the State of Mississippi. This was until August of 1987, when Mr. Miller went to Pennsylvania seeking work through the Union of Operating Engineers, Local 25, whose office is in Philadelphia, Pennsylvania. Miller lived in that area only while he was working as a captain for ADC. Miller is currently a resident of the State of Mississippi.

Since returning in February of 1988, Miller has been primarily treated by Dr. Chris Wiggins, whose office is located in Pascagoula, Mississippi. In addition to Dr. Wiggins, there have been several other consulting physicians in the Mississippi Gulf Coast area who have rendered treatment to Mr. Miller.

ADC, is a Pennsylvania corporation, with its principal place of business in Camden, New Jersey. ADC has a current license to do business in Louisiana. ADC has maintained this license with the Louisiana Secretary of

State since 1959. Today, ADC is still a corporation in good standing with the Louisiana Secretary of State's office. In addition, as admitted by the defendant in their memorandum in support of their exceptions, ADC currently maintains an agent for service of process in New Orleans. This agent is CT Corporation, the agent which was served with Miller's lawsuit on December 19, 1989.

C. RULINGS OF THE COURTS BELOW

The defendant, American Dredging Corporation, filed two (2) Exceptions in this matter. The first was an exception to the exercise of the Louisiana state court of *in personam* jurisdiction. That exception was denied by Judge Federoff. The next was an exception of *forum non conveniens,* which was granted by Judge Federoff. It is from the granting of that exception that an appeal to the Louisiana Fourth Circuit was taken.

The hearing on the exceptions of American Dredging Company for lack of jurisdiction *in personam,* and alternatively for dismissal by reason of *forum non conveniens,* was held on September 21, 1990. The court entered its reasons for Judgment on September 25, 1990. It was ordered, adjudged and decreed that the exception of defendant, American Dredging Company for lack of jurisdiction *in persoman* be denied; but the exception under the doctrine of *forum non conveniens,* be granted and the matter was dismissed subject to right of plaintiff to pursue the claim in a court of competent jurisdiction in Pennsylvania. This Judgment was signed on September 28, 1990. A Motion for Suspensive Appeal was filed on behalf of the appellant, William R. Miller, Sr., on October

26, 1990. The appeal order was signed by Judge Federoff on November 8, 1990.

The Louisiana Fourth Circuit Court of Appeal upheld the trial court's ruling in its decision of May 30, 1991. The Louisiana Supreme Court reversed the lower court's decision on March 2, 1992 and held that: (1) The doctrine of *forum non conveniens* was specifically made unavailable by State statute in Jones Act at maritime law cases and, (2) Louisiana *forum non conveniens* rule was not preempted by federal admiralty law.

REASONS FOR DENYING THE WRIT

(1) ADC requests this Court to grant a writ of certiorari based on purported conflict of authority and the impact that conflict will have upon maritime commerce. ADC claims that there is a conflict between the federal application of *forum non conveniens* and maritime law cases and the Louisiana Supreme Court decision in *Miller v. American Dredging Co.*, 595 So. 2d 615 (La. 1992) and also *Markzannes v. The Bermuda Star Line, Inc.*, 545 So. 2d 537 (La. 1989) cert. denied *Bermuda Star Line, Inc. v. Markzannes*, 493 U.S. 1043, 110 S. Ct. 837 (1990), where the Louisiana Supreme Court refused to apply the doctrine of *forum non conveniens* in a Jones Act and maritime claim, respectfully.

The action presently before the Court is not a part of the purported conflict. Miller was an American seaman working on board an American vessel and therefore covered by American law, more specifically the Jones Act, 46 U.S.C.A. Sec. 688. This Court ruled previously that State

courts may accept or reject the doctrine of *forum non conveniens* in a FELA case according to its own notions of procedural policy. This previous ruling of this Court is also applicable to a Jones Act claim because it incorporates the Federal Employers' Liability Act, 45 U.S.C.A. § 56. Therefore, the granting of the writ of certiorari in this case will not resolve the issues presented by ADC.

(2) Further, the states and their courts should be given the same administrative independence in applying or not applying the procedural doctrine of *forum non conveniens* in maritime cases, as is allowed the federal courts which apply the federal notions of *forum non conveniens* in causes of action filed in federal court pursuant to diversity jurisdiction, 28 U.S.C.A. § 1332.

1. This American Jones Act case is an inappropriate vehicle to re-examine the application of the doctrine of *forum non conveniens* as it applies to litigation involving foreign parties in an American court.

The only real issue that can be presented by a grant of the writ of certiorari in this matter is whether, in a Jones Act case, 46 U.S.C.A. § 688, a Louisiana state court may accept or reject the doctrine of *forum non conveniens* according to its own notions of procedure for all causes of action begun in its courts. Although this Court has yet to address the doctrine of *forum non conveniens* in a Jones Act/Admiralty case, the Court has addressed the doctrine in the context of the Federal Employers' Liability Act (FELA). In *Missouri v. Mayfield*, 340 U.S. 1, 71 S. Ct. 1 (1950), this Court addressed the issue whether Missouri